

Biological Evaluation:
The Potential Effects of the Proposed Reissuance
of the NPDES General Permit for New and Existing Sources
in the Oil and Gas Extraction Point Source Category
for the Western Portion of the Outer Continental Shelf
of the Gulf of Mexico

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U.S. Environmental Protection Agency
Region 6
1445 Ross Ave.
Dallas, Texas 75202
ATTACHMENT No. 1

This biological evaluation accounts for the direct, indirect, and cumulative effects of the proposed reissuance of the National Pollutant Discharge Elimination System (NPDES) permit on Federally-listed threatened and endangered species. Thirteen federally listed threatened and endangered species under NOAA Fisheries' jurisdiction might occur following within the action area (Outer Continental Shelf of the Gulf of Mexico have been reported to exist in the). EPA has determined that due to the geographic distribution of the listed species, the proposed action will not affect the including the northern right whale (*Eubalaena glacialis*), blue whale (*Balaenoptera musculus*), finback whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*) humpback whale (*Megaptera novaeangliae*), the : Fish: Gulf sturgeon (*Acipenser oxyrinchus desotoi*), and the West Indian manatee (*Trichechus manatus latirostris*); Whales: northern right (*Eubalaena glacialis*), blue (*Balaenoptera musculus*), finback (*Balaenoptera physalus*), sei (*Balaenoptera borealis*) humpback (*Megaptera novaeangliae*) Based on the enclosed analysis, EPA has determined that the proposed action **may affect but is unlikely to adversely affect** the and sperm whale (*Physeter macrocephalus*), ; other mammals: West Indian manatee (*Trichechus manatus latirostris*); or the following listed t Turtles: Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), green (*Chelonia mydas*) nor is the proposed action likely to result in destruction or adverse modification of designated critical habitat. EPA Region 6 has determined that modification of the permit may affect but is not likely to adversely affect those species.

Proposed Action

The proposed action is the reissuance of the NPDES general permit for New and Existing Sources in the Oil and Gas Extraction Point Source Category for the Western Portion of the Outer Continental Shelf Of the Gulf of Mexico (Permit Nno. GMG290000) hereafter referred to as the OCS general permit. The proposed permit will regulate existing source and New Source facilities in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR Part 435, Subpart A), located in and discharging to the Outer Continental Shelf offshore of Louisiana and Texas. The discharge of produced water to that portion of the Outer Continental Shelf from Offshore Subcategory facilities located in the territorial seas of Louisiana and Texas is also authorized by this permit. Effluent Limitations Guidelines for discharges associated with the use of synthetic and other non-aqueous based drilling fluids were promulgated on January 22, 2001.

The draft permit proposes to retain the limitations and conditions of the expiring permit. The existing permit limitations conform with the Oil and Gas Offshore Subcategory Guidelines and contain additional requirements to assess impacts from the discharge of produced water to the marine environment, as required by Section 403(c) of the Clean Water Act.

The following changes to the expiring permit are proposed as part of the permit reissuance:

- The time frame is specified for collection of a produced water sample after a sheen is observed.
- The discharge prohibitions at National Marine Sanctuaries are clarified in an attempt to better reflect National Oceanic and Atmospheric Administration regulations.
- The variability factor for use in determining compliance with the permit's limits for sediment toxicity and biodegradation is removed.
- The requirement to submit fourteen day advanced notification of intent to be covered by the permit is removed.
- The final discharge monitoring report will be required to be submitted along with the a notice of termination.
- New test methods are allowed for monitoring cadmium and mercury in stock barite.
- Several minor miscellaneous discharges are added to better represent deep water technologies.
- A produced water study to determine the potential impacts of produced water discharges on the hypoxic zone in the northern Gulf of Mexico is being proposed.
- Other changes to the permit's miscellaneous discharge requirements are proposed to clarify that toxicity testing is not required for non-toxic dyes.
- Other minor changes in wording are also proposed to resolve confusion of EPA's intent regarding the permit's requirements.

EPA is proposing that the permit be reissued for a three year term. This will provide adequate time for the produced water study to be conducted. EPA and Minerals Management Service (MMS) will work in partnership to determine the appropriate next steps based on this study.

Regulatory History

On April 3, 1981 (see 46 FR 20284), EPA published three final general NPDES permits authorizing discharges from facilities in the Offshore Subcategory of the Oil and gas Extraction Point Source Category which were located offshore of Louisiana and Texas. Two of those permits, TX0085651 and LA0060224, authorized discharges from facilities located in the territorial seas off Louisiana and Texas. The third permit, TX0085642, authorized discharges from facilities located seaward of the outer boundary of the territorial seas off Louisiana and Texas, an area commonly

known as the Outer Continental Shelf. The Outer Continental Shelf General Permit did not include several facilities located near the Flower Garden Banks, an area with sensitive biological features approximately 120 miles southeast of Galveston, Texas. Twelve facilities in the vicinity of the Flower Garden Banks were authorized to discharge under individual permits. The 1981 general permits implemented "Best Practicable Control Technology Currently Available" (BPT) guidelines for the Offshore Subcategory (see 40 CFR 435). Those permits contained a daily maximum oil and grease limit of 72 mg/l for produced water discharges, a prohibition of the discharge of oil based drilling fluids, a limit of no free oil for drilling fluids, drill cuttings, deck drainage and well treatment fluids, and 1 mg/l residual chlorine for sanitary waste water.

The permits expired April 3, 1983 and were reissued on September 15, 1983 (48 FR 41494) with an expiration date of June 30, 1984. The permits were issued for a short period of time because National Effluent Limitations Guidelines for Best Available Technology Economically Achievable were expected to be promulgated by 1983 and again by 1984. The limitations contained in the permits were unchanged in that reissuance, however, some changes were made for facilities located near the Flower Garden Banks. Lease blocks: North Padre Island 962 and Garden Banks 113 through 132, which were previously excluded from the permit, were authorized to discharge. High Island South block A392 was excluded from the permit because of its potential effects. The Louisiana Territorial Seas General Permit was reissued on November 7, 1997 (62 FR 59687) and renumbered as LAG260000. The Texas Territorial Seas General Permit is presently in the process of being reissued as TXG260000.

The Outer Continental Shelf General Permit was reissued on July 9, 1986 (51 FR 24897). In that action EPA Region 6 issued a joint permit with Region 4 which authorized discharges from facilities located in the Outer Continental Shelf throughout the Gulf of Mexico. The permit, numbered GMG280000, prohibited the discharge of oil based drilling fluids, oil contaminated drilling fluids, drilling fluids containing diesel oil, and drill cuttings generated using oil based drilling fluids. New limits were included in the permit for suspended particulate phase toxicity in drilling fluids, the drilling fluid discharge rate near areas of biological concern, and for free oil in drilling fluids and drill cuttings. That general permit expired on July 1, 1991.

On November 19, 1992, EPA Region 6 reissued the NPDES general permit for the Western Gulf of Mexico Outer Continental Shelf (57 FR 54642) covering operators of lease blocks in the Offshore Subcategory of the Oil and gas Extraction Point Source Category located seaward of the outer boundary of the territorial seas of Texas and Louisiana. As a part of that reissuance, new limits for produced water toxicity were added, as well as new limits for cadmium and mercury in stock barite, and a prohibition on the discharge of drilling fluids to which mineral oil has been added. That general permit was modified on December 3, 1993, to implement Offshore subcategory effluent limitations guidelines which were promulgated March 4, 1993 (58 FR 12504) and to include more accurate calculations of produced water critical dilutions. A general permit covering New Sources in that same area of coverage was issued and combined with the Western Gulf of Mexico Outer Continental Shelf general permit on August 9, 1996 (61 FR 41609). The

permit expired on November 19, 1997 and was reissued in two parts on November 2, 1998 (63 FR 58722), and April 19, 1999 (64 FR 19156).

In the 1998/1999 reissuance, EPA Region 6 authorized new discharges of seawater and freshwater to which treatment chemicals, such as biocides and corrosion inhibitors, have been added. The maximum discharge rate limit for produced water was removed and the critical dilutions required to be met for the produced water toxicity limit were updated based on the new discharge rates and more current models. To account for advances in drilling fluid technology, the permit was modified on December 18, 2001 (66 FR 65209) to authorize discharges associated with the use of synthetic based drilling fluids. Additional monitoring requirements were also included at that time to address hydrostatic testing of existing piping and pipelines and those discharges were authorized. That permit expired on November 3, 2003 and is being proposed to be reissued at this time.

ESA Section 7(a)(2) Consultation History

EPA consulted with the National Marine Fisheries Service, Southeast Region in 1991 regarding the reissuance of the NPDES general permit for the Outer Continental Shelf of the Western Gulf of Mexico for discharges in federal waters from Louisiana and Texas. A biological evaluation was submitted by EPA. The Service concurred, via letter dated June 28, 1991, that populations of endangered/threatened species under purview of the Service would not be adversely affected by the proposed action.

EPA modified the NPDES permit for new and existing sources in the oil and gas extraction point source category for the western portion of the Outer Continental Shelf of the Gulf of Mexico (Permit No. GMG290000). The proposed modification addressed development of new types of drilling fluids used in offshore oil and gas exploration and development activities. Given the more stringent discharge prohibitions and limitation in the proposed permit, the Service stated in its November 27, 2001 concurrence letter, that the effects of the proposed action on listed species were believed insignificant and not likely to adversely affect any ESA-listed species under the Service purview.

In 1993, EPA consulted with the Southeast Region regarding the proposed NPDES New Source general permit (GMG390000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source category. The Service concurred, via letter dated November 4, 1993, that populations of endangered/threatened species under the Service's purview would not be adversely affected by the proposed action.

Geographic Area

The expiring general permit covers existing source facilities and new source facilities in the

